Supreme Court, U. S.
FILED
DEC 4 1978
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-890

ALVIN GERSON LEVITT,
AND JAMES RILEY,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT
OF CERTIORARI FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ARTHUR LEWIS
205 South Broadway, Suite 802
Los Angeles, California 90012
(213) 624-4901

Attorney for LEVITT

MORTON BOREN
205 South Broadway, Suite 600
Los Angeles, California 90012
(213) 628-6361

Attorney for RILEY

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. _____

ALVIN GERSON LEVITT,
AND JAMES RILEY,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT
OF CERTIORARI FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR
A WRIT OF CERTIORARI

ARTHUR LEWIS
205 South Broadway, Suite 802
Los Angeles, California 90012
(213) 624-4901

Attorney for LEVITT

MORTON BOREN
205 South Broadway, Suite 600
Los Angeles, California 90012
(213) 628-6361

Attorney for RILEY

TOPICAL INDEX

	Page
Table of Authorities	iii
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING A WRIT	6
I PETITIONERS HEREIN WERE UNREASONABLY AND UNFAIRLY DENIED THE RIGHT TO AN EVIDENTIARY HEARING UPON A MOTION TO SUPPRESS EVIDENCE, AS GUARANTEED BY THE RECENT CASE OF FRANKS V. DELAWARE (1978) ___ U.S. ___, 57 L.Ed.2d 667, EVEN THOUGH THEY MET THE FRANKS' REQUIREMENT THAT A SUBSTANTIAL PRELIMINARY SHOWING OF A MATERIAL OMISSION OF FACT IN THE AFFIDAVIT MUST BE MADE FIRST.	6

II THERE WAS AN INSUFFICIENT SHOWING THAT NORMAL INVESTIGATIVE TECHNIQUES WERE TRIED AND FAILED OR REASONABLY APPEARED UNLIKELY TO SUCCEED TO UPHOLD THE VALIDITY OF THE ORDER FOR WIRETAP UNDER 18 U.S.C. §§2516, ET SEQ. 9

CONCLUSION 12

APPENDIX A A-1

APPENDIX B B-1

APPENDIX C C-1

TABLE OF AUTYORITIES

Cases — Page

Franks v. Delaware, ___ U.S. ___, 57 L.Ed.2d 667 (1978) 2, 3, 5, 6 7, 8, 9, 12

People v. Kerrigan, 514 F.2d 35 (9th Cir. 1975) 11, 12

United States v. Bobo, 477 F.2d 974 (4th Cir. 1973) 11

United States v. Chavez, 94 S.Ct. 1849 (1974) 10

United States v. Cox, 449 F.2d 679 (10th Cir. 1971) cert. den. 406 U.S. 934 (1972) 11

United States v. Cox, 462 F.2d 1293 (8th Cir. 1972) 11

United States v. Giordano, 40 L.Ed.2d 341 (1974) 10

United States v. Kalustian, 529 F.2d 585 (9th Cir. 1976) 11, 12

United States v. Spagnuolo, 549 F.2d 705 (9th Cir. 1977) 11, 12

Constitution

United States Constitution, Fourth Amendment 9

Statutes

18 U.S.C. §1955	1, 3, 4, 8, 11
18 U.S.C. §2516	2, 9, 10, 12
18 U.S.C. §2517	10
18 U.S.C. §2518	3, 4, 5, 10, 11
28 U.S.C. §1254(1)	3

Miscellaneous

Rules of Supreme Court of United States, Rule 46	1

IN THE
SUPREME COURT
OF THE UNITED STATES
No. _____

ALVIN GERSON LEVITT,
AND JAMES RILEY,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO: THE UNITED STATES SUPREME COURT, OCTOBER TERM, 1978:

The petitioners, Alvin Gerson Levitt and James Riley pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit filed September 1, 1978 which affirmed the petitioners' convictions of violating Title 18, U.S.C. §1955 (illegal gambling business). This single petition is jointly filed on behalf of each petitioner pursuant to Rules of Supreme Court of the United States, Rule 46.

It is vital that this court hear petitioners' case so that it may establish more precise guidelines for the courts to follow in applying the new rules of Franks v. Delaware, ___ U.S. ___, 57 L.Ed.2d 667 (1978). To wit: the petitioners met all the requirements of Franks to entitle them to an evidentiary hearing on a motion to suppress yet were denied said hearing.

Furthermore, this case presents a clear abuse of the wiretap statute by the government. The government herein attempts to avoid the strict requirements of the wiretap statute with regard to its investigative techniques by merely parroting the language of the statute without a real factual basis to justify a conclusion that other investigative techniques were tried or were too dangerous (18 U.S.C. §§2516, et seq.).

OPINION BELOW

The memorandum opinion of the United States Court of Appeals for the Ninth Circuit appears in Appendix A attached hereto. No opinion was rendered by the United States District Court for the Central District of California.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on September 1, 1978. A timely Petition for

Rehearing En Banc was denied on November 3, 1978. A copy of the Order denying the Petition for Rehearing and Suggestion for Rehearing En Banc is attached hereto as Appendix B. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I

Whether petitioners herein made the necessary showing of a material omission in a wiretap application affidavit to entitle them to an evidentiary hearing as required under Franks v. Delaware, ___ U.S. ___, 57 L.Ed.2d 667 (1978).

II

Was there a sufficient showing that normal investigative techniques were tried and failed, or reasonably appeared unlikely to succeed, to uphold the validity of the order for wiretap?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following relevant provisions appear in the Appendix as Appendix C:

Title 18, U.S.C. §§2518(1)(c) and (3)(c);
Title 18, U.S.C. §1955.

STATEMENT OF THE CASE

The petitioners herein were charged by indictment with violating 18 U.S.C. §1955 (conducting an illegal gambling business). Three other persons were indicted along with petitioners.

A Motion to Suppress Evidence, based upon the failure of the government in its application to wiretap (pursuant to 18 U.S.C. §2518) was denied as was petitioners' request for an evidentiary hearing thereon.

Counsel for petitioners, at the time of the argument on the Motion to Suppress, made an offer of proof of the court that a material omission in the government's affidavit in support of the wiretap application had been made. Specifically, counsel for Levitt offered to prove to the court that agents of the FBI would testify that they had an informant, one Charles Millikan, who was a back office clerk for defendant Levitt who could have supplied all the vital information required by the government for a successful prosecution without the need for a wiretap. (A back office clerk is one who permanently records the wagers taken from front office clerks and consequently knows all the front offices and clerks, the amounts wagered, the bookmaking agents' identities, bettors' identities, as well as having direct contact with the head of the organization.)

Counsel contended that this testimony would establish that the application for wiretap did not set forth all the facts known to the affiant to enable

the magistrate to make an informed judgment that Normal Investigative Techniques had been tried and failed (as required by 18 U.S.C. §2518). The court refused to hold an evidentiary hearing.

(Subsequent to the denial of the motion for an evidentiary hearing, the United States Supreme Court handed down Franks v. Delaware, ___ U.S. ___, 57 L.Ed.2d 667, which guarantees the right to an evidentiary hearing under such circumstances.)

After denial of the Motion to Suppress, trial proceeded by way of a Stipulation of Facts. The United States put on no evidence other than that contained in the Stipulation. Counsel for Levitt put forward no other defense but did reiterate his belief that the wiretap application was defective and that an evidentiary hearing should have been held.

All defendants were found guilty by the court. Defendant Levitt was sentenced to two years in the custody of the Attorney General on provision that four months be spent in a jail-type institution and that the balance of the sentence would be suspended and defendant would be placed on five years probation. Execution of the sentence was stayed pending appeal and bond was left up to stand. Defendant Riley was placed on three years probation and required to pay a fine.

A timely appeal was taken to the United States Court of Appeals for the Ninth Circuit which affirmed the confictions on September 1, 1978. Because of the subsequent handling down of Franks v. Delaware, supra, a Petition for Rehearing and Suggestion for

Rehearing En Banc was then timely filed. On November 3, 1978 the Ninth Circuit handed down an Order denying petitioners' Request for Rehearing and Rehearing En Banc and this Petition for a Writ of Certiorari now follows.

REASONS FOR GRANTING A WRIT

I

PETITIONERS HEREIN WERE UNREASONABLY AND UNFAIRLY DENIED THE RIGHT TO AN EVIDENTIARY HEARING UPON A MOTION TO SUPPRESS EVIDENCE, AS GUARANTEED BY THE RECENT CASE OF FRANKS V. DELAWARE (1978) ___ U.S. ___, 57 L. Ed. 2d 667, EVEN THOUGH THEY MET THE FRANKS' REQUIREMENT THAT A SUBSTANTIAL PRELIMINARY SHOWING OF A MATERIAL OMISSION OF FACT IN THE AFFIDAVIT MUST BE MADE FIRST.

This court in Franks v. Delaware, supra, recently decided the important issue of whether a defendant has a right to an evidentiary hearing upon a motion to suppress evidence when a showing has been made that a government affidavit may contain a material omission or falsehood. The court resolved the issue (and a conflict in the circuits and states) by holding that there is such

a right where a substantial preliminary showing is made that there is a material falsehood or omission:

> "Where the defendant makes a substantial preliminary showing that a false statement, knowingly and intentionally or with reckless disregard for the truth was included by the officers in [a] warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at defendant's request."

At a hearing on the motion to suppress in Franks, defense counsel orally amended the challenge to include an attack on the veracity of the warrant affidavit; he also specifically requested the right to call as witnesses, a Detective Brooks, a Mr. Lucas and a Mr. Morrison. Counsel asserted that Lucas and Morrison would testify that neither had been personally interviewed by the affiant as alleged, and that although they might have talked to another police officer, any information given by them to that officer was "somewhat different" from what was recited in the affidavit. Franks' counsel charged that the misstatements were included in the affidavit not inadvertently, but in "bad faith." The trial court sustained the state's objection to the defendant's proposed evidence and requested hearing. The Delaware Supreme Court affirmed and the United States Court reversed.

In the instant case, at trial, counsels for petitioners did not have the benefit of Franks

(since it was handed down later) but nonetheless made an oral request similar to counsel's request in Franks, i.e., Levitt's counsel requested permission at the time of the suppression motion to call certain FBI agents who would testify that they had an informant, one Millikan, who was a "back office clerk" for defendant Levitt who knew all the "front" offices and clerks, the amounts wagered, the bookmaking agents' identities, bettors' names and in general could supply all the information necessary for a successful prosecution under §1955, without the need for the wiretap which the government used. (Such evidence, if accepted by the court, would result in suppression of the wiretap's evidence since the wiretap statute only permits wiretapping where "normal investigative techniques" are insufficient. See Reason for Granting a Writ II, infra.

Even though counsel for Levitt made various oral requests for an evidentiary hearing the court refused to hold one. The trial proceeded by way of a Stipulation of Facts and defendants were convicted. An appeal was taken to the Ninth Circuit Court of Appeals, but before Franks was handed down. (See Appendix A for the opinion.) Defendants' convictions were affirmed by the Ninth Circuit but a Petition for Rehearing and Suggestion for Rehearing En Banc was timely made when counsel discovered that Franks had been handed down. The Ninth Circuit refused a Rehearing, without comment.

It is petitioners' contention that the Ninth Circuit acted incorrectly as well as unfairly in denying petitioners' appeal. Petitioners made a

substantial preliminary showing of a material omission in the government's affidavit and an evidentiary hearing was properly requested as per Franks. Petitioners can only speculate that the Ninth Circuit simply did not want to bother reopening a case once it was decided, regardless of any new cases coming down, even if they were directly on point. Petitioners feel that they should not be denied their Fourth Amendment rights simply because they were exercising them in advance of the Supreme Court's definite ruling thereon.

Finally, it is vitally important that this court further clarify and better define exactly those instances where a sufficient showing has been made to entitle a defendant to a Franks' type hearing. The broad standards set out in that case are simply too ill defined to adequately inform the lower courts of when a defendant is en titled to an evidentiary hearing.

II

THERE WAS AN INSUFFICIENT SHOWING THAT NORMAL INVESTIGATIVE TECHNIQUES WERE TRIED AND FAILED OR REASONABLY APPEARED UNLIKELY TO SUCCEED TO UPHOLD THE VALIDITY OF THE ORDER FOR WIRETAP UNDER 18 U.S.C. §§2516, ET SEQ.

While petitioners rely primiarily on the failure of the court to grant the evidentiary hearing as the major ground for this Petition, it is also respectfully

submitted that there was government noncompliance with the statutory requirements of 18 U.S.C. §§2516, 2517 and 2518(1)(c) which resulted in the improper issuance of an order to wiretap.

Although the United States Supreme Court has not given direct consideration to the sufficiency of applications alleging unlikely success of other investigative techniques (see United States v. Chavez, 94 S.Ct. 1849 (1974), footnote 3) the Court has summarized the importance of these requirements in United States v. Giordano, 40 L.Ed.2d 341 (1974):

> "Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and envinced a clear intent to make doubly sure that the statutory authority be used with restraint and only where circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must stat e and the court must find that normal investigative procedures had been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. (Citation omitted.)"

The Act has been upheld against constitutional attack only because courts serve to maintain precision as to its requirements and to closely scrutinize wiretap orders to ensure that the issuing magistrate not serve merely as a

"rubber stamp" for the police. (United States v. Kalustian, supra, 529 F.2d at 589; United States v. Bobo, 477 F.2d 974 (4th Cir. 1973); United States v. Cox, 449 F.2d 679 (10th Cir. 1971), cert. den. 406 U.S. 934 (1972); United States v. Cox, 462 F.2d 1293 (8th Cir. 1972).)

In People v. Kerrigan, 514 F.2d 35 (1975 9th Cir.), also involving a prosecution under 18 U.S.C. §1955, the Court found in Kerrigan an affidavit of a wiretap to be marginally sufficient in satisfying the normal investigative techniques requirements of 2518(1)(c) but, more significantly, the court warned against the use of boilerplate recitations:

> "We agree with appellants that boilerplate recitations of the difficulty of gathering usable evidence in bookmaking prosecutions is not sufficient basis for granting a wiretap order. To hold otherwise would be to make §2518(1)(c) and (3)(c) mere formalities in bookmaking cases."

It is clear therefore that a supportive affidavit must demonstrate by specific factual evidence why traditional investigative techniques are not sufficient to the particular case at hand. United States v. Kalustian (1976), 529 F.2d 585 (disapproving an affidavit); United States v. Spagnuolo, 549 F.2d 705, 710 (9th Cir. 1977).

The application in the instant case should have been quashed because the affidavit on its face contained less than the showing that normal

investigative techniques had been tried and failed than the disapproved affidavit in Kalustian, supra. Also, the instant affidavit contains far less of a showing than the "original" affidavit which was approved in Kerrigan or that set forth in Spagnuolo.

The instant affidavit is long in length, but it contains the boilerplate, conclusionary statements and lack of particularization disapproved of in the aforementioned cases.

Because of the clear Congressional dictate that the wiretap statute only be used where normal investigative techniques have been tried or failed, it is imperative that this court review the instant case so that it may review the abusive use of this statute that has occurred. This Honorable Court should establish further guidelines in regards to wiretap affidavits and §§2516, et seq., so as to adequately safeguard the Congressional mandate.

CONCLUSION

This Petition presents the important question of the scope of the right to an evidentiary hearing as guaranteed in Franks v. Delaware, supra, and also presents the question of government compliance with the wiretap statute's requirement that normal investigative techniques be used or reasonably appear to be unlikely to succeed, before a wiretap application can be granted. Both questions are of

major, national import in the criminal field and require this court's consideration.

Respectfully submitted,

ARTHUR LEWIS
Attorney for ALVIN LEVITT

MORTON BOREN
Attorney for JAMES RILEY

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Sep 1 1978
Emil E. Melfi, Jr.
Clerk, U.S. Court of Appeals

UNITED STATES OF AMERICA,	)	
	)	No. 77-3470
Appellee,	)	78-1082
	)	
v.	)	MEMORANDUM
	)	
ALVIN GERSON LEVITT and	)	
JAMES JOSEPH RILEY,	)	
	)	
Appellants.	)	
	)	

Appeal from the United States District Court for the Central District of California

BEFORE: WALLACE and SNEED, Circuit Judges and ENRIGHT, District Judge*

Appellants challenge their convictions for illegal gambling activities under Title 18 U.S.C. Section 1955. Four issues are raised regarding: 1) the sufficiency of the Government's application for authorization to intercept wire communications; 2) the necessity of holding an evidentiary

*Honorable William B. Enright, United States District Judge for the Southern District of California, sitting by designation.

hearing on the motion to suppress; 3) the sufficiency of the evidence as to Appellant Riley; and 4) the constitutionality of Sections 1955 and 2518 of Title 18 of the United States Code. We affirm.

SUFFICIENCY OF GOVERNMENT APPLICATION FOR WIRETAPS

Title 18 U.S.C. Section 2518(1)(c) requires that a Government application for a wiretap order contain:

> "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

Upon examination of the affidavit submitted by the Government in support of the application for a wiretap order, we find that the Government provided an adequate factual basis upon which the court could determine that normal investigative techniques, employed for a reasonable length of time, were unsuccessful. Specifically, the affidavit stated that physical surveillance conducted during the six months prior to the issuance of the wiretap had proved fruitless, that the Government's informants refused to testify even if given immunity, that search warrants employed in the past had been ineffective to gain sufficient evidence to prosecute Levitt, that telephone toll records had proved ineffective to gain substantial evidence because the subjects did not make many long distance calls, and

that undercover infiltration would not be likely to succeed because Levitt only employed persons whom he knew personally or were recommended by friends. The Government fulfilled the statutory requirements establishing the necessity for the wiretaps.

DENIAL OF EVIDENTIARY HEARING

Appellants contend that the district court erred in not granting their request for an evidentiary hearing on the sufficiency of the Government's application for the wiretap order.

The movant has the burden of demonstrating that some allegation in the Government's affidavit is false before he is entitled to a hearing for the purpose of impeaching the affidavit. United States v. Scott, 555 F.2d 522 (5th Cir. 1977). Where the defendant challenged an affidavit supporting a search warrant, the court stated:

> "Evidentiary hearings need not be set as a matter of course, but if the moving papers are sufficiently definite, specific, detailed, and non-conjectural to enable a court to conclude that contested issues of fact going to the validity of the search are in question, an evidentiary hearing is required." United States v. Ledesma, 499 F.2d 36, 39 (9th Cir. 1974), cert. denied, 419 U.S. 1024 (1974).

An evidentiary hearing is not required unless the movant makes a prima facie showing that the affidavit includes a substantial falsehood or omission. United States v. Harris, 501 F.2d 1, 5-6 (9th Cir. 1974). Appellants did not make the showing required in Harris; accordingly the district court's denial of their request for an evidentiary hearing was not in error.

SUFFICIENCY OF THE EVIDENCE AS TO APPELLANT RILEY

Appellant Riley maintains that there was insufficient evidence linking him to his co-defendants' gambling operation. The evidence against Riley included, inter alia: 1) intercepted telephone conversations in which Riley received "pay and collect" figures for at least twelve different persons; 2) an incriminating statement taken at the time of Riley's arrest; 3) betting paraphernalia taken from another suspect; and 4) expert testimony on gambling operations. Viewing the evidence in the light most favorable to the Government, we find that there was ample evidence in the record to support Riley's conviction. Glasser v. United States, 315 U.S. 60 (1942).

CONSTITUTIONALITY OF 18 U.S.C. §1955 AND 18 U.S.C. §2518

We disagree with Appellants' contention that 18 U.S.C. §1955 and §2518 are unconstitutional. See, United States v. Feldman, 535 F.2d 1175 (9th Cir. 1975), cert. denied, 429 U.S. 940 (1976).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
Nov 3 1978
Emil E. Melfi, Jr.
Clerk, U.S. Court of Appeals

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. ALVIN GERSON LEVITT and JAMES JOSEPH RILEY, Defendants-Appellants.	)	Nos. 77-3470 78-1082
	)	ORDER

Before: WALLACE and SNEED, Circuit Judges, and ENRIGHT,* District Judge

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

*Honorable William B. Enright, United States District Judge, Southern District of California, sitting by designation.

APPENDIX C

TITLE 18 U.S.C.

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Added Pub.L. 91-452, Title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937.

§ 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

* * *

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

* * *

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that—

* * *

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;